

## APPEAL NO. 010448

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 5, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 12th, 13th, 14th, and 15th quarters. The claimant appealed, contending that the hearing officer erred in her determination that the claimant had some ability to work during the qualifying periods; that the claimant did not attempt in good faith to obtain employment commensurate with her ability; and that the claimant has permanently lost entitlement to SIBs. The respondent (carrier) responded, urging affirmance.

### DECISION

Affirmed.

Sections 408.142 and 408.143 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d) (Rule 130.102(d)) set out the statutory and regulatory requirements for entitlement to SIBs. At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with her ability to work. The hearing officer's determination that the claimant's unemployment during the qualifying periods for the 12th, 13th, 14th, and 15th SIBs quarters was a direct result of the claimant's impairment from the compensable injury has not been appealed and will not be addressed further. The claimant asserts that she is entitled to SIBs for the 12th, 13th, 14th, and 15th quarters based on no ability to work. The parties stipulated that the 12th quarter qualifying period is from June 11, 1999, to September 9, 1999; the 13th quarter qualifying period is from September 10, 1999, to December 9, 1999; the 14th quarter qualifying period is from December 10, 1999, to March 9, 2000; the 15th quarter qualifying period is from March 10, 2000, to June 8, 2000; and the claimant made no effort to seek employment during the qualifying periods.

The standard of what constitutes a good faith effort to obtain employment commensurate with the ability to work where the claimant asserts a total inability to work is set out in Rule 130.102(d)(3) for the 12th quarter qualifying period and (d)(4) for the 13th through 15th quarter qualifying periods. Rule 130.102(d)(3) or (4), as applicable, provides that:

[a]n injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee:

- (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The Appeals Panel has stated that all three elements of Rule 130.102(d)(4) must be satisfied. See, e.g., Texas Workers' Compensation Commission Appeal No. 001619, decided August 21, 2000.

The hearing officer, in her Statement of the Evidence, addressed each of the elements of Rule 130.102(d)(3) or (4) and cites evidence to support her determinations. The hearing officer's decision is supported by the evidence.

The claimant also appeals the hearing officer's determination that the claimant has permanently lost entitlement to SIBs. To the extent that the claimant argues that there was no issue in that regard, we would point out that the claimant stipulated that if it was determined that the claimant was not entitled SIBs for four consecutive quarters then the claimant would permanently lose entitlement to SIBs.

Finally, the claimant refers to Rule 130.108(a), which tells a carrier not to pursue a dispute of SIBs without a "factual or legal basis." This rule also tells a carrier to consider a comparison between the "factual situation" of the previous qualifying period with the "factual situation" of the current qualifying period. There was no issue as to this point at the hearing. Even if there were, we would note that the "factual situation" for the 12th quarter qualifying period could be "considered" to be different from the 11th (which was paid by the carrier) based on the report from Dr. S and a functional capacity evaluation, which indicated that the claimant could work "at a medium duty level." Those events in the current qualifying periods may be "considered" to be factually different when weighed. See Texas Workers' Compensation Commission Appeal No. 000178, decided March 14, 2000. This point presents no basis for reversal.

Accordingly, the hearing officer's decision and order are affirmed.

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Thomas A. Knapp  
Appeals Judge

CONCUR:

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Judy L. S. Barnes  
Appeals Judge

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Michael B. McShane  
Appeals Judge